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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,648	05/09/2006	Holger R. Scholl	DE 030373	1808
24737 7590 12/05/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
NGUYEN, QUYNH H				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
12/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,648

**Applicant(s)**

SCHOLL ET AL.

**Examiner**

QUYNH H. NGUYEN

**Art Unit**

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-7 and 13 is/are rejected.  
7) ☒ Claim(s) 8-12 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)  
3) ☐ Information Disclosure Statement(s) (PTO/CDC)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

2. Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaffer et al. (2002/0108113).

As to claims 1 and 13, Schaffer teaches a system and method for program recommendation comprising the steps of: accessing program information ([0072]) where the program information comprises a plurality of broadcast channels, a broadcast time of content pieces broadcast at the channels, and a content description of the content pieces ([0029] - [0030], [0035], [0063]); selecting pieces of content within a time interval (Fig. 3A; [0025]); calculating for a plurality of content pieces a piece score, the piece score indicating a match of the content description with a profile ([0028], [0036], [0053]); determining a plurality of sequences of content pieces, where the content pieces contained in the sequences are broadcast consecutively at the channels ([0034] - [0035]); calculating for the sequences a sequence score, based at least on the pieces scores of pieces contained in the sequence and on a correlation of the content descriptions of at least two of the pieces contained in the sequence ([0028], [0036], [0053]; [0055]); and selecting at least one of the sequences according to the sequence score ([0038], [0056]).

***Claim Rejections - 35 USC § 103***

3. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffer et al. (2002/0108113) in view of Pachet et al. (EP1170722 A).

As to claim 2, Schaffer does not explicitly teach selection means are configured to calculate the sequence score according to one or more rules and the sequence score is calculated from the pieces score and the correlation values.

Pachet teaches selection means are configured to calculate the sequence score according to one or more rules and the sequence score is calculated from the pieces score and the correlation values ([0070] - [0076]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Pachet into the teachings of Schaffer in order to have a more efficient system and resulting better sequence score and correlation values.

As to claims 3-5 and 7, Pachet teaches the selection means are configured to calculate the path score such that it is lower the more switchovers from a first content piece of the sequence to a second content piece, if two or more content pieces in a sequence are of a common type or does not contain content pieces of predetermined type ([0042] - [0044]).

As to claim 6, Pachet teaches the selection means are configured to pre-select a number of sequence based on the piece scores of the content pieces of the sequences, and calculate path scores only for the pre-select sequences ([0043] - [0048]).

***Allowable Subject Matter***

4. Claim 8 and its dependent would be allowable if rewritten or amended to overcome the possible 101 rejection set forth in this Office action.

***Response to Arguments***

5. Applicant's arguments filed 10/10/08 have been fully considered but they are not persuasive.

Applicant argues that Schaffer does not teach selection means for selecting pieces of content within a time interval. Examiner respectfully submits that Schaffer teaches Fig. 3A shows a recommendations list type listed in decreasing order of strength of recommendation, for example Presidential Debate starts in 5 minutes, and hence this read on the above limitation. Applicant argues that Schaffer does not teach "calculating for said sequences a sequence score, based at least on said piece scores of the pieces contained in said sequence...". Examiner respectfully submits that Schaffer teaches the nominal recommendation may be a function calculated based on personal profile ([0028]); a program recommender calculates a prioritized list of potential show occurring around now [0053]; a recommendation score determined in the section on analytical formulation and function value is calculated ([0055]), hence this read on the above limitation. In addition, Applicant merely argues that the combination with secondary reference Pachet might involve taking the maximum of the final

recommendation of the present show and the next show. Examiner respectfully submits that this is irrelevant.

Furthermore, claims 1 and 8 are drawn to a system comprises various means. The specification suggests that the method may be implemented as a computer program... ([0036]). Therefore the specification provides evidence that the claimed system cover nonstatutory embodiment, i.e. software per se. Claim 13 is a method claim. In order for a method to be considered a "process" under 101, a claimed process must either (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1876)). If neither of these requirements is met by the claims, the method is not a patent eligible process under 101 and is non-statutory subject matter. Thus, to qualify as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example, by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example, by identifying the material that is being changed to a different state. Failure to make appropriate corrections would lead to 101 rejection.

Claims 1 and 8 recite "System for program recommendation with" should be --  
System for program recommendation comprising: --. Appropriate corrections required.

### **Conclusion**

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH H. NGUYEN whose telephone number is 571-272-7489. The examiner can normally be reached on Monday - Thursday from 6:30 A.M. to 5:00 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Quynh H Nguyen/

Primary Examiner, Art Unit 2614